IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17048 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH RAMESHBHAI GOSWAMI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 17048 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR. A.D. OZA, LD. GP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India the petitioner detenu has challenged the detention order No: PCB/DTN/PASA/53/2003 dated 2-9-2003 (Annexure-A) passed by Respondent No.1 and prays for quashing & setting aside the said detention order and setting the petitioner at liberty.

2. In the grounds of detention, copy whereof is at Annexure-B, it is stated that as many as 3 cases under section 379 and 114 I.P.C. came to be registered against the petitioner on 7-5-2003, 19-5-2003 and 19-8-2003 respectively. In all the three cases, petitioner is alleged to have committed theft of Hero Honda Splendor Motor Cycle. 2 unregistered cases relating to the incident of 29-8-2003 have also been referred to. The privilege under section 9(2) of the Prevention of Anti Social Activities Act, 1985 (herein after referred to 'PASA Act') have also been invoked in the public interest.

3. Challenging the impugned order of detention it has been submitted by Mr. Kamlesh Kachhavah, learned advocate for the petitioner that the acts alleged against the petitioner are the acts directed against an individual and that the same at the most attracts maintenance of law & order rather than public order and the impugned order of detention being not for the maintenance of public order is liable to be quashed.

4. While dealing with section 3 of the PASA Act in the case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI v. POLICE COMMISSIONER, SURAT & ORS, 2000 (1) GLR, Pg. 816, the Division Bench observed that the four cases registered against the detenu under I.P. Code, looking to the incidents the case falls under the maintenance of 'Law and Order' and not 'Public Order' and therefore the subjective satisfaction arrived by the detaining authority cannot be said to be legal or valid. The order of detention could have been passed for maintenance of public order.

5. In the instant case, the three cases registered against the petitioner and the other unregistered cases referred to in the grounds of detention are directed against the individuals mentioned in the complaints registered as well as unregistered. Under the circumstances the present case cannot be said to be a case falling under 'Public Order; but falls under the maintenance of 'Law & Order'. The petition is squarely covered by the decision in the case of Ashokbhai Jivraj Jivabhai Solanki (supra) and therefore required to be

granted and the impugned detention order required to be quashed and set aside.

6. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCB/DTN/PASA/53/2003 dated 2-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.1 is quashed and set aside. The petitioner detenu - Dinesh Rameshbahi Goswami is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 26-2-2004 (N.G. Nandi, J)

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